

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LISA JEAN HUGHES,

Plaintiff,

v.

NANCY A. BERRYHILL, Deputy
Commissioner of Operations of Social
Security,

Defendant.

Case No. CV 17-03544-RAO

**MEMORANDUM OPINION AND
ORDER**

19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION

Plaintiff Lisa Jean Hughes (“Plaintiff”) challenges the Commissioner’s denial of her application for a period of disability and disability insurance benefits (“DIB”). For the reasons stated below, the decision of the Commissioner is REVERSED and REMANDED.

II. PROCEEDINGS BELOW

On March 28, 2013, Plaintiff applied for DIB alleging disability beginning January 15, 2013. (Administrative Record (“AR”) 54, 67.) Her application was denied initially on August 16, 2013, and upon reconsideration on January 3, 2014. (AR 87, 94.) Plaintiff filed a written request for hearing, and a hearing was held on

1 September 14, 2015. (AR 33, 100.) Represented by counsel, Plaintiff appeared and
2 testified, along with an impartial vocational expert. (AR 35-53.) On October 9,
3 2015, the Administrative Law Judge (“ALJ”) found that Plaintiff had not been
4 under a disability, pursuant to the Social Security Act,¹ from March 28, 2013
5 through December 31, 2014, the date last insured (“DLI”). (AR 25-26.) The ALJ’s
6 decision became the Commissioner’s final decision when the Appeals Council
7 denied Plaintiff’s request for review. (AR 1.) Plaintiff filed this action on May 10,
8 2017. (Dkt. No. 1.)

9 The ALJ followed a five-step sequential evaluation process to assess whether
10 Plaintiff was disabled under the Social Security Act. *Lester v. Chater*, 81 F.3d 821,
11 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff had not engaged
12 in substantial gainful activity from January 15, 2013, her alleged onset date
13 (“AOD”), through the DLI. (AR 16.) At **step two**, the ALJ found that Plaintiff has
14 the following severe impairments: multi-level degenerative disc disease of the
15 cervical spine with C5-C6 foraminal stenosis; mild degenerative changes at L4-L5;
16 and history of retinal vasculitis currently resolved. (*Id.*) At **step three**, the ALJ
17 found that Plaintiff “did not have an impairment or combination of impairments
18 that met or medically equaled the severity of one of the listed impairments in 20
19 CFR Part 404, Subpart P, Appendix 1.” (AR 19.)

20 Before proceeding to step four, the ALJ found that Plaintiff had the residual
21 functional capacity (“RFC”) to:

22 [P]erform light work . . . , as the claimant is able to lift and carry
23 twenty pounds occasionally and ten pounds frequently; is able to stand
24 or walk up to six hours in an eight-hour workday; and is able to sit for
25 up to six hours in an eight-hour workday. However, the claimant can
only occasionally climb ladders. The claimant can only frequently

26 ¹ Persons are “disabled” for purposes of receiving Social Security benefits if they
27 are unable to engage in any substantial gainful activity owing to a physical or
28 mental impairment expected to result in death, or which has lasted or is expected to
last for a continuous period of at least 12 months. 42 U.S.C. § 423(d)(1)(A).

1 balance and crawl. The claimant has no limitations with climbing
2 stairs, stooping, kneeling, and crouching. The claimant must avoid
3 working at heights or operating hazardous machinery. The claimant
4 can adapt to predictable changes in a work setting.

(AR 19-20.)

5 At **step four**, the ALJ found that Plaintiff was capable of performing past
6 relevant work as a service scheduler and as an accounting clerk, and thus the ALJ
7 did not continue to step five. (AR 24.) Accordingly, the ALJ determined that
8 Plaintiff had not been under a disability from the AOD through the DLI. (AR 25-
9 26.)

10 **III. STANDARD OF REVIEW**

11 Under 42 U.S.C. § 405(g), a district court may review the Commissioner's
12 decision to deny benefits. A court must affirm an ALJ's findings of fact if they are
13 supported by substantial evidence and if the proper legal standards were applied.
14 *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). "Substantial evidence"
15 means more than a mere scintilla, but less than a preponderance; it is such relevant
16 evidence as a reasonable person might accept as adequate to support a conclusion."
17 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (citing *Robbins v. Soc.*
18 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)). An ALJ can satisfy the substantial
19 evidence requirement "by setting out a detailed and thorough summary of the facts
20 and conflicting clinical evidence, stating his interpretation thereof, and making
21 findings." *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citation omitted).

22 "[T]he Commissioner's decision cannot be affirmed simply by isolating a
23 specific quantum of supporting evidence. Rather, a court must consider the record
24 as a whole, weighing both evidence that supports and evidence that detracts from
25 the Secretary's conclusion." *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir.
26 2001) (citations and internal quotation marks omitted). "Where evidence is
27 susceptible to more than one rational interpretation,' the ALJ's decision should be
28 upheld." *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing

1 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)); *see Robbins*, 466 F.3d at
2 882 (“If the evidence can support either affirming or reversing the ALJ’s
3 conclusion, we may not substitute our judgment for that of the ALJ.”). The Court
4 may review only “the reasons provided by the ALJ in the disability determination
5 and may not affirm the ALJ on a ground upon which he did not rely.” *Orn v.*
6 *Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (citing *Connett v. Barnhart*, 340 F.3d
7 871, 874 (9th Cir. 2003)).

8 **IV. DISCUSSION**

9 Plaintiff raises a single issue for review: whether the ALJ properly
10 considered the opinion of treating neurosurgeon Moustapha Abou-Samra, M.D.
11 (Joint Stipulation (“JS”) 4.) For the reasons below, the Court agrees with Plaintiff
12 and remands.

13 **A. The ALJ Did Not Properly Reject the Opinion of Plaintiff’s** 14 **Treating Physician**

15 Plaintiff contends that the ALJ erred in rejecting Dr. Abou-Samra’s opinion
16 solely for being an improper opinion on the issue of disability. (*See JS 11-12.*) The
17 Commissioner contends that the ALJ provided sufficient reasons to reject Dr.
18 Abou-Samra’s statements. (*See JS 15.*)

19 **1. Applicable Legal Standard**

20 Courts give varying degrees of deference to medical opinions based on the
21 provider: (1) treating physicians who examine and treat; (2) examining physicians
22 who examine, but do not treat; and (3) non-examining physicians who do not
23 examine or treat. *Valentine v. Comm’r, Soc. Sec. Admin.*, 574 F.3d 685, 692 (9th
24 Cir. 2009). Most often, the opinion of a treating physician is given greater weight
25 than the opinion of a non-treating physician, and the opinion of an examining
26 physician is given greater weight than the opinion of a non-examining physician.
27 *See Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014).

28 ///

1 The ALJ must provide “clear and convincing” reasons to reject the ultimate
2 conclusions of a treating or examining physician. *Embrey v. Bowen*, 849 F.2d 418,
3 422 (9th Cir. 1988); *Lester*, 81 F.3d at 830-31. When a treating or examining
4 physician’s opinion is contradicted by another opinion, the ALJ may reject it only
5 by providing specific and legitimate reasons supported by substantial evidence in
6 the record. *Orn*, 495 F.3d at 633; *Lester*, 81 F.3d at 830; *Carmickle v. Comm’r*,
7 *Soc. Sec. Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008). “An ALJ can satisfy the
8 ‘substantial evidence’ requirement by ‘setting out a detailed and thorough summary
9 of the facts and conflicting evidence, stating his interpretation thereof, and making
10 findings.’” *Garrison*, 759 F.3d at 1012 (citation omitted).

11 **2. Discussion**

12 In assessing Plaintiff’s limitations and RFC, the ALJ gave little weight to Dr.
13 Abou-Samra’s opinions, finding that Dr. Abou-Samra “makes only generalized
14 statements and conclusions, but does not specify the claimant’s abilities.” (AR 23-
15 24.) The ALJ noted Dr. Abou-Samra’s January 2014 statement that Plaintiff was
16 unlikely to be able to work at her usual job sitting at a desk and dealing with
17 computers, and Dr. Abou-Samra’s conclusion that Plaintiff was totally disabled for
18 the time being. (AR 23; *see* AR 850-51.) The ALJ also noted that in April 2014,
19 Dr. Abou-Samra indicated that Plaintiff “for now is totally and temporarily
20 disabled.” (AR 23; *see* AR 567.) The ALJ acknowledged that the opinion of a
21 treating physician is generally entitled to great weight. (AR 23.) However, the ALJ
22 stated that statements that a claimant is “disabled,” “unable to work,” or cannot
23 perform a past job are dispositive administrative findings, not medical opinions.
24 (AR 23.)

25 Physicians may provide clinical medical opinions, “or they may render
26 opinions on the ultimate issue of disability—the claimant’s ability to perform
27 work.” *Reddick*, 157 F.3d at 725. Although the determination of a claimant’s
28

1 ultimate disability is reserved to the Commissioner, *see* 20 CFR § 404.1527(e)(1),
2 the ALJ must give specific and legitimate reasons supported by substantial evidence
3 in the record to reject a treating physician’s opinion that Plaintiff cannot work. *See*
4 *McAllister v. Sullivan*, 888 F.2d 599, 602-03 (9th Cir. 1989) (finding remand
5 warranted where an ALJ failed to give specific and legitimate reasons for
6 disregarding treating physician’s testimony that claimant was “fully disabled for
7 employment”). “In sum, reasons for rejecting a treating doctor’s credible opinion
8 on disability are comparable to those required for rejecting a treating doctor’s
9 medical opinion.” *Reddick*, 157 F.3d at 725.

10 Here, the ALJ found that Dr. Abou-Samra made only “generalized statements
11 and conclusions” and failed to specify Plaintiff’s abilities. (AR 23-24.) The
12 Commissioner also notes that, “importantly,” Dr. Abou-Samra did not provide
13 limitations concerning Plaintiff’s ability to perform work activities. (JS 15.)
14 However, for claims filed before March 27, 2017, medical opinions are defined as
15 “statements from physicians and psychologists or other acceptable medical sources
16 that reflect judgments about the nature and severity of your impairment(s),
17 including your symptoms, diagnosis and prognosis, what you can still do despite
18 impairment(s), and your physical or mental restrictions.” 20 CFR § 404.1527(a)(1).
19 Statements regarding a claimant’s restrictions and what she can do despite her
20 impairments are listed as *types* of statements that “reflect judgments about the
21 nature and severity of [a claimant’s] impairment(s),” but they are not mandated by
22 the express language of 20 CFR § 404.1527(a)(1). *See Parvon v. Colvin*, No. CV
23 15-00110 ACK-BMK, 2016 WL 1047992, at *10 (D. Haw. Mar. 11, 2016)
24 (“Defendant provides no case law in support of the contention that medical
25 opinions must contain a description of ‘what [a claimant] can still do despite
26 impairment(s), and [a claimant’s] physical or mental restrictions.’ Nor has the
27 Court been able to locate any supporting case law. Indeed, the Court notes that the
28 regulations simply state that medical opinions may *include* statements regarding a

1 claimant's limitations or restrictions." (citation omitted)).

2 Dr. Abou-Samra's statements reflected judgments about the nature and
3 severity of Plaintiff's impairments, including Plaintiff's symptoms (AR 846
4 (intense neck, bilateral shoulder, and arm pain); 850 ("left side trapezius and
5 shoulder pain are getting worse")), Plaintiff's diagnosis and prognosis (AR 848
6 (Plaintiff's vasculitis "is still quite symptomatic"); AR 853 (diagnosing
7 degenerative cervical abnormalities)), and Plaintiff's restrictions (AR 851 (unlikely
8 that she is able to sit at a desk)). Accordingly, the Court finds that Dr. Abou-Samra
9 provided a proper medical opinion with respect to these records. *See Boardman v.*
10 *Astrue*, 286 F. App'x 397, 399 (9th Cir. 2008) (finding that a physician "clearly
11 expressed a medical opinion" when he described a claimant's symptoms, gave a
12 prognosis, and described restrictions); *Parvon*, 2016 WL 1047992, at *10 (finding
13 that an examining physician's statement on the nature and severity of impairments,
14 symptoms, diagnosis and prognosis, and mental restrictions constituted a medical
15 opinion).

16 The ALJ referenced some of Dr. Abou-Samra's opinions about Plaintiff's
17 need for surgery, but she did not discuss the full extent of Dr. Abou-Samra's
18 opinions, nor did she assign them any weight or give specific reasons for rejecting
19 them. (AR 23.) Although Dr. Abou-Samra's opinion was seemingly contradicted
20 by a state agency medical consultant's opinion—which the ALJ found to be
21 consistent and well supported by the record (AR 24)—the ALJ was required to set
22 forth specific and legitimate reasons, supported by substantial evidence, for
23 rejecting Dr. Abou-Samra's opinions. "The decision of an ALJ fails this test when
24 the ALJ completely ignores or neglects to mention a treating physician's medical
25 opinion that is relevant to the medical evidence being discussed." *Lingenfelter*, 504
26 F.3d at 1045; *see Garrison*, 759 F.3d at 1012-13 ("Where an ALJ does not
27 explicitly reject a medical opinion or set forth specific, legitimate reasons for
28 crediting one medical opinion over another, he errs." (internal citation omitted));

1 *Marsh v. Colvin*, 792 F.3d 1170, 1171-72 (9th Cir. 2015) (finding that an ALJ erred
2 by not mentioning a treating provider's opinion that communicated a diagnosis,
3 subjective symptoms, and observations about the claimant's abilities).

4 The Court finds that the ALJ failed to provide legally sufficient reasons to
5 reject the opinions and statements provided by Dr. Abou-Samra. Additionally,
6 because the ALJ's decision completely ignores some of Dr. Abou-Samra's
7 opinions, the Court cannot determine whether the ALJ considered them or how they
8 may have factored into the overall analysis. The Court therefore is unable to
9 determine whether the error was harmless. *See Buchanan v. Colvin*, 636 F. App'x
10 414, 415-16 (9th Cir. 2016) (remanding when the Court could not determine how
11 three doctors' opinions may have factored into the ALJ's analysis because the
12 ALJ's decision was "completely silent" about those opinions).

13 **V. CONCLUSION**

14 IT IS ORDERED that Judgment shall be entered REVERSING the decision
15 of the Commissioner denying benefits, and REMANDING the matter for further
16 proceedings consistent with this Order.

17 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this
18 Order and the Judgment on counsel for both parties.

19
20 DATED: May 14, 2018

_____/s/
21 ROZELLA A. OLIVER
22 UNITED STATES MAGISTRATE JUDGE
23

24 **NOTICE**

25 **THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW,**
26 **LEXIS/NEXIS, OR ANY OTHER LEGAL DATABASE.**
27
28